IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 561 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRIJASHANKAR ALIAS GIRISHBHAI L. RAWAL

Versus

MANSHANKAR LAXMISHANKAR RAWAL

Appearance:

MS SNEHA A JOSHI for Petitioner

NOTICE SERVED for Respondent No. 1

MR MA BUKHARI, APP for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/10/2000

ORAL JUDGEMENT

1. The order dated August 24, 1999 of the learned Judicial Magistrate, Surendranagar is under challenge in this revision, which has been taken up for hearing on admission.

2. Learned counsel for the revisionist and Shri MA Bukhari, representing the State have been heard.

3. The brief facts are that, a complaint was filed by the revisionist which was sent by the learned Magistrate to the Police for investigation under sec.156(3) of the Code of Criminal Procedure. The matter was investigated by the Police. Number of witnesses were interrogated and their statements were recorded. Shri

Bukhari has pointed out that none of the witnesses interrogated by the Police supported the allegation made in the complaint. After completing the investigation the Police submitted final report within the ambit of sec.169 of the Code of Criminal Procedure. The learned Magistrate, instead of straightaway accepting the final report, thought it desirable, in the interest of justice, to issue notice to the complainant. As such, notice was issued to the complainant. The complainant appeared and opposed acceptance of final report. The learned Magistrate took cognizance of the matter and proceeded to record statement of the complainant. After the statement of the complainant was over, he moved an application praying for further investigation by the Police to find out with whom the gold and silver coins, gold ornaments, etc. are there. This application was rejected by the learned Magistrate on the ground that, once the process is issued on a complaint then it cannot be sent again to the Police for further investigation. It was also observed that, since the evidence has started, the application was not maintainable.

3. Feeling aggrieved by this order, the instant revision has been filed.

4. It has been argued by the learned counsel for the revisionist that further investigation could be ordered by the learned Magistrate at any stage with a view to administer effective justice. Shri Bukhari has further argued that the learned Magistrate has no power to order re-investigation or further investigation and, because complete investigation was done by the Police there was no necessity for re-investigation.

5. Power of further investigation flows from sec.173(8) of the Code of Criminal Procedure Code which provides that, "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub sec.(2) has been forwarded to the Magistrate and, where upon such investigation, the officer in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub secs.(2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub sec.(2)."

6. Sub sec.(2) of sec.173 provides for submission of Police report in the prescribed form to the Magistrate after the investigation is completed. Thus, the power

for further investigation under sub sec.(8) of sec.173 could be exercised after submission of Police report but, before cognizance is taken by the Magistrate under sec.190 of the Code of Criminal Procedure. This point came up for consideration before the Apex Court in Randhir Singh Rana v/s. State AIR 1997 S.C. p.639. The Apex Court, in this case, after considering the other decisions of the Apex Court, considered two situation. The first was, whether the Police can make further investigation under sub sec.(8) of sec.173 after cognizance has been taken by the Magistrate without taking permission from the Magistrate. On this point, the view of the Apex Court has been that, with a view to maintain independence of the magistracy and the judiciary, interests of the purity of administration of criminal justice and interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the Police should inform the Court and seek formal permission to make further investigation when fresh facts come to light." This situation has not arisen in the case before me because, the Police has already submitted final report, and thereafter the Magistrate took cognizance by issuing process against the accused and the accused was summoned. No further permission was sought by the Police for further investigation. The second point for consideration before the Apex Court was, whether the Magistrate can order for further investigation after he has taken cognizance of the offence. On this point, the Apex Court has categorically laid down that, "the Magistrate of his own, cannot order for further investigation under sec.173(8) of the Code of Criminal Procedure. If the Magistrate could not order further investigation on his own notion, he could not have ordered further investigation, even on the notion of the complainant." As such in view of the aforesaid verdict of the Apex Court, I do not find any illegality in the impugned order. The revision is therefore summarily rejected.

October 4, 2000. (D.C. Srivastava, J.)
/sakkaf